

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

SHARROD MOTEN,

Plaintiff,

v.

VIETH, *et al.*

Defendants.

Case No. 1:24-cv-00068-KES-CDB (PC)

ORDER ADOPTING FINDINGS AND  
RECOMMENDATIONS TO DENY  
PLAINTIFF'S APPLICATION TO PROCEED  
IN FORMA PAUPERIS

Docs. 2, 7, 10

Sharrod Moten seeks to proceed in forma pauperis in this action, asserting that defendants are liable for violations of his civil rights. Docs. 1, 2. This matter was referred to a United States magistrate judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

In the findings and recommendations to deny plaintiff's application to proceed in forma pauperis, the assigned magistrate judge found plaintiff subject to the three-strikes bar of 28 U.S.C. § 1915(g), identifying the following cases:

1. *Moten v. Calderon*, No. 2:23-cv-02595-DOC-SP (C.D. Cal.) (dismissed for failure to state a claim on May 31, 2023, appeal denied on January 10, 2024);
2. *Moten v. Phiefer*, No. 2:23-cv-06355-DOC-SP (C.D. Cal. (dismissed for failure to state a claim on September 29, 2023);

1       3. *Moten v. Abrams*, No. 2:23-cv06359-GW (C.D. Cal.) (dismissed for failure to state a  
2       claim on September 6, 2023, appeal dismissed as frivolous on January 17, 2024).  
3       Doc. 7 at 2. The magistrate judge also found that plaintiff failed to show he was in imminent  
4       danger of serious physical injury and therefore failed to meet the imminent danger exception  
5       under § 1915. *Id.* at 3. The findings and recommendations were served on plaintiff and  
6       contained notice that any objections were to be filed within fourteen (14) days of service and that  
7       the “failure to file objections within the specified time may waive the right to appeal the District  
8       Court’s order.” *Id.* at 4 (citing *Wilkerson v. Wheeler*, 772 F.3d 834, 839 (9th Cir. 2014); *Baxter v.*  
9       *Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991). Plaintiff did not file objections to the findings and  
10      recommendations and the time in which to do so has passed.<sup>1</sup>

11       Pursuant to 28 U.S.C. § 636(b)(1), and Local Rule 304, this Court conducted a de novo  
12      review of this case. Having carefully reviewed the file, this Court concludes the findings and  
13      recommendations are supported by the record and by proper analysis. The magistrate judge  
14      correctly determined that plaintiff was precluded from proceeding in forma pauperis under 28  
15      U.S.C. § 1915(g) on account of his three prior strikes and that plaintiff failed to demonstrate that  
16      he was in imminent danger of serious physical injury.

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26      <sup>1</sup> On June 28, 2024, plaintiff filed a notice of motion for an addendum to his complaint, Doc. 10,  
27      which the Court has also reviewed. Nothing in plaintiff’s filing at Doc. 10 demonstrates that he is  
28      in imminent danger of serious physical injury or otherwise undermines the magistrate judge’s  
    findings and recommendations.

1 Accordingly,

- 2 1. The January 22, 2024, Findings and Recommendations (Doc. 7) are ADOPTED in  
3 full;  
4 2. Plaintiff's motion to proceed in forma pauperis (Doc. 2) is DENIED;  
5 3. Plaintiff shall pay the \$405 filing fee in full for this action within 30 days of the  
6 date of service of this order; and  
7 4. Plaintiff is advised that failure to comply with this order will result in the dismissal  
8 of this action.

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11 IT IS SO ORDERED.

12 Dated: March 28, 2025

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UNITED STATES DISTRICT JUDGE